

APPENDIX E16

Instructional Letter 4055.02
Environmental Compliance Assurance
(August 2004)

**I-405, SR520 to SR522 Stage 1
(Kirkland Stage 1)**

Final Package Review – 15%
January 25, 2005



Project Team

Congestion Relief & Bus Rapid Transit Projects



Instructional Letter

Number: IL 4055.02

/s/ John F. Conrad
Assistant Secretary for Engineering and
Regional Operations

Effective: July 28, 2004
Expires: July 31, 2005

Environmental Compliance Assurance Procedure For Construction Projects and Activities

I. Introduction

A. Purpose

This Instructional Letter provides the Washington State Department of Transportation (WSDOT) with the *Environmental Compliance Assurance Procedure for Construction Projects and Activities*, attached as Appendix A. The purpose of the procedure is to recognize and eliminate environmental violations during construction on WSDOT construction sites, and to ensure prompt notification of WSDOT management and resource agencies. For purposes of this procedure, violations are defined as actions that are not in compliance with environmental standards, permits, or laws.

B. Supersession and Changes

This Instructional Letter supersedes and replaces the one dated March 10, 2003, with the same title. We extended the expiration date until July 31, 2005. We added outline numbers and letters to the document.

We updated the text of Appendix A, *Environmental Compliance Assurance Procedure for Construction Projects and Activities*, to clarify what constitutes a significant violation, information the Regional Environmental Manager must obtain, and when and to whom they forward the information.

Revised text is marked with change bars in the margin.

C. Background

The *Environmental Compliance Assurance Procedure for Construction Projects and Activities* attached as Appendix A provides a standard procedure for identifying unanticipated, unauthorized, or un-permitted environmental conditions encountered during the construction of WSDOT projects. Representatives from the WSDOT Environmental and Engineering Programs, the Governor's Office, the Army Corps of Engineers, Associated General Contractors of Washington, and the State Departments of Ecology and Fish and Wildlife (working under the *Transportation Permit Efficiency and Accountability Committee*) have cooperatively developed the *Environmental Compliance Assurance Procedure for Construction Projects and Activities*. This procedure is intended to raise awareness and reduce or eliminate the occurrence of environmental violations during construction at WSDOT project sites.

D. Scope and term of this Instructional Letter

This Instructional Letter applies to all WSDOT construction projects and activities. Procedures are effective immediately and continue for one year or until rescinded or extended in writing. We will publish the procedure in the *Construction Manual M 41-01* and the *Environmental Procedures Manual M 31-11* within one year.

II. Appendix

A. Environmental Compliance Assurance Procedure for Construction Projects and Activities



Request Alternate Formats:

- Hearing impaired call 1-800-833-6388 and ask for (206) 515-3683
- All others call collect (206) 389-2839

Environmental Compliance Assurance Procedure for Construction Projects and Activities

Purpose

The purpose of the Environmental Compliance Assurance procedure is to recognize and eliminate environmental violations during the construction phase on Washington State Department of Transportation (WSDOT) construction sites, and to ensure prompt notification to WSDOT management and agencies. For purposes of this procedure, violations are defined as actions that are not in compliance with environmental standards, permits, or laws.

Procedure Overview

When any action (Notification Trigger) below occurs or if there are questions about compliance, the Project Engineer (PE) shall initiate this procedure to develop corrective actions to solve the identified problem. The Regional Environmental Manager (REM) will serve as a resource to the PE and give priority to addressing the actions, activities, or situations that stem from notification triggers. The PE and REM will work together on an appropriate response to the notification trigger to avoid or minimize environmental damage.

- A. Notification Triggers:** "Notification Triggers" (listed below) means an action, activity, or situation that requires the Project Engineer to implement the Environmental Compliance Assurance Procedure.
1. Notice from a resource agency that a violation has occurred;
 2. Any action that, in the judgment of the REM, contractor or Project Engineer, may violate environmental permit conditions, agreements, or approvals for the project; or other environmental laws, ordinances, or regulations;
 3. Any unauthorized work, activity, or fill in wetlands, shorelines, creek beds (including dry channels), other waters of the state, or critical habitat;
 4. Any emergency protection activity that involves unauthorized placement of fill in wetlands, shorelines, creek beds (including dry channels) or waters of the state or for bank stabilization activities where fill or structures are placed on the bank;
 5. Any action or project revision requested by an agency after a site inspection that may be in conflict with other permits;
 6. Any spill, discharge or release of hazardous materials, oil, or chemicals to land or water;

* Denotes that the action is mandatory when the violation 1) results in agency enforcement staff coming on site to conduct enforcement review; and/or 2) there is a high likelihood the event will result in NOV's or penalty.

7. Any situation that results in a fish kill, or if dead or dying fish are discovered in the vicinity of the project;
8. Activities that monitoring shows are out of compliance.

B. Notification and Resolution Process: In the event of a notification trigger, the following steps shall be taken:

1. If a notification trigger is observed first by the contractor or REM, the contractor or REM shall immediately notify the Project Engineer.
2. The **Project Engineer (PE)** must:
 - Step 1. Immediately notify the Contractor of the situation, implement emergency response procedures including agency notification, and suspend all non-conforming work on the site.
 - Step 2. Immediately notify the Regional Environmental Manager (REM). Consultation with the REM must occur before any remediation actions are taken.
 - Step 3. In consultation with REM assemble the following information:
 - a. The activities that triggered the notification and why they occurred.
 - b. Location of the work.
 - c. Potential solutions to the problem, or if additional investigation is needed, the agreed upon course of action.
 - d. Any related site constraints or safety issues.
 - e. Urgency of the issue.
 - Step 4. Notify his or her immediate supervisor.
 - Step 5. * Notify the Regional Administrator.
 - Step 6. In consultation with the REM determine the resource agencies having jurisdiction and who will notify them.
 - Step 7. Document all actions, conversations and activities.

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3. ^(Kimberly Farley) The **Regional Environmental Manager (REM)** must immediately:
- Step 1. * Notify the Director of Environmental Services.
 - Step 2. Notify his or her immediate supervisor.
 - Step 3. Work with the Project Engineer to resolve the issue that caused the notification trigger.
 - Step 4. Identify and obtain appropriate permits or permit revisions with the aid of the Project Engineer.
 - Step 5. Document all actions, conversations, and activities. Communicate issues and send appropriate documentation to Regulatory and/or Resource Agencies.

4. ^(Megan White) * The **Director of Environmental Services** must immediately:
- Step 1. Notify Compliance Branch Manager and any other ESO Program Managers associated with the resource issue.
 - Step 2. Notify Director of Environmental & Engineering Programs.
 - Step 3. Notify the Regional Environmental Manager that the Director of Environmental & Engineering Programs has been contacted. Regional Environmental Manager must then notify the Project Engineer that the violation reporting procedure has been completed.

5. ^(Dave Dyer) * The **Regional Administrator** will: ^(Don Nelson)
- Step 1. Coordinate with the **Director of Environmental & Engineering Programs** ^(John Conrad) to contact the **Assistant Secretary of Engineering and Regional Operations** advising him or her of the situation, and provide updates as needed on the situation.
 - Step 2. Ensure that the **Project Engineer** and the **Regional Environmental Manager** have the necessary resources, authority and organizational support to successfully resolve the environmental problem.

- C. **Timing:** Due to costs of project delays, or risk of not acting quickly during emergency situations, the REM shall provide a 24-hour contact person for environmental consultation.

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D. Documentation:

1. The **Project Engineer** shall document the details of the notification and problem resolution in the contract records.
(Kimberly Farley)
2. The **Regional Environmental Manager** shall maintain a record of all regional non-compliance events. REMs shall collect and maintain, at a minimum, the following data on all non-compliance events:
 - a. Project Name and location
 - b. PE and Prime Contractor
 - c. Incident Date
 - d. Incident Description
 - e. Permit/Regulation Violated
 - f. Resource Agency(s) notified and date of notification
 - g. Whether or not resource agency staff conducted site review in response to notification
 - h. Record of NOV's and/or penalties issued

The REM shall provide all regional non-compliance tracking data to ESO Compliance Branch Manager for the purposes of annual reporting and review of compliance performance.

3. * For violations, the appropriate documentation needed to record the violation, and achieve resolution, including any preliminary mitigation solutions, will be collectively developed by the **Project Engineer** and the **Regional Environmental Manager**, and shall be coordinated with and sent to the appropriate regulatory and/or resource agency.

E. Roles and Responsibilities:

1. **Project Engineer (PE)** is the person responsible for the project and administration of the construction contract. This responsibility may be delegated to a subordinate employee on site, but the ultimate responsibility for making sure these procedures are followed will be with the Project Engineer. The Project Engineer shall have a thorough knowledge of all of the environmental permit conditions and design requirements for the project, and have such certifications and other qualifications as may be required.

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2. **Regional Environmental Manager (REM)** is the person responsible for administering the regional environmental program. This responsibility may be delegated to a subordinate employee with knowledge of environmental permitting and procedures, but the ultimate responsibility for setting and interpreting regional environmental policy will be with the Regional Environmental Manager.
3. **Contractor** is as defined in Section 1-01.3 of the Standard Specifications for Road, Bridge, and Municipal Construction (2002).

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